Organizational Conflict of Interest (OCI)

OCI Learning Objectives

- Explain concern over organizational conflict of interest (OCI)
- Define OCI
- Predict where OCI is likely to occur
- Present OCI policy
  - Including new OCI Policy re: source selection
- Identify OCI
- Learn common ways to mitigate OCI
- Appreciate industry perspective on OCI

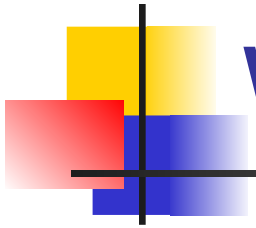
This course addresses Organizational Conflicts of Interest

Distinction between personal conflict of interest, as addressed

in ethics guidelines

OCI: Why be concerned?

- If not spotted and addressed early, OCI can STOP an acquisition or contract performance in its tracks
- All government personnel, without exception, are responsible for preventing actual, potential, or the appearance of an OCI



What is OCI?

- Due to business activities and relationships, a person/organization
  - is unable or *potentially* unable to provide the govt with impartial assistance or advice
  - has an unfair competitive advantage due to exposure to proprietary or source selection information

Where and when is OCI likely to occur?

Contracts for

- Management support services
- Consultant or other similar professional services
- Contractor assistance in technical evaluation
- Systems engineering/technical assistance contracts

Where and when is OCI likely to occur? (cont.)

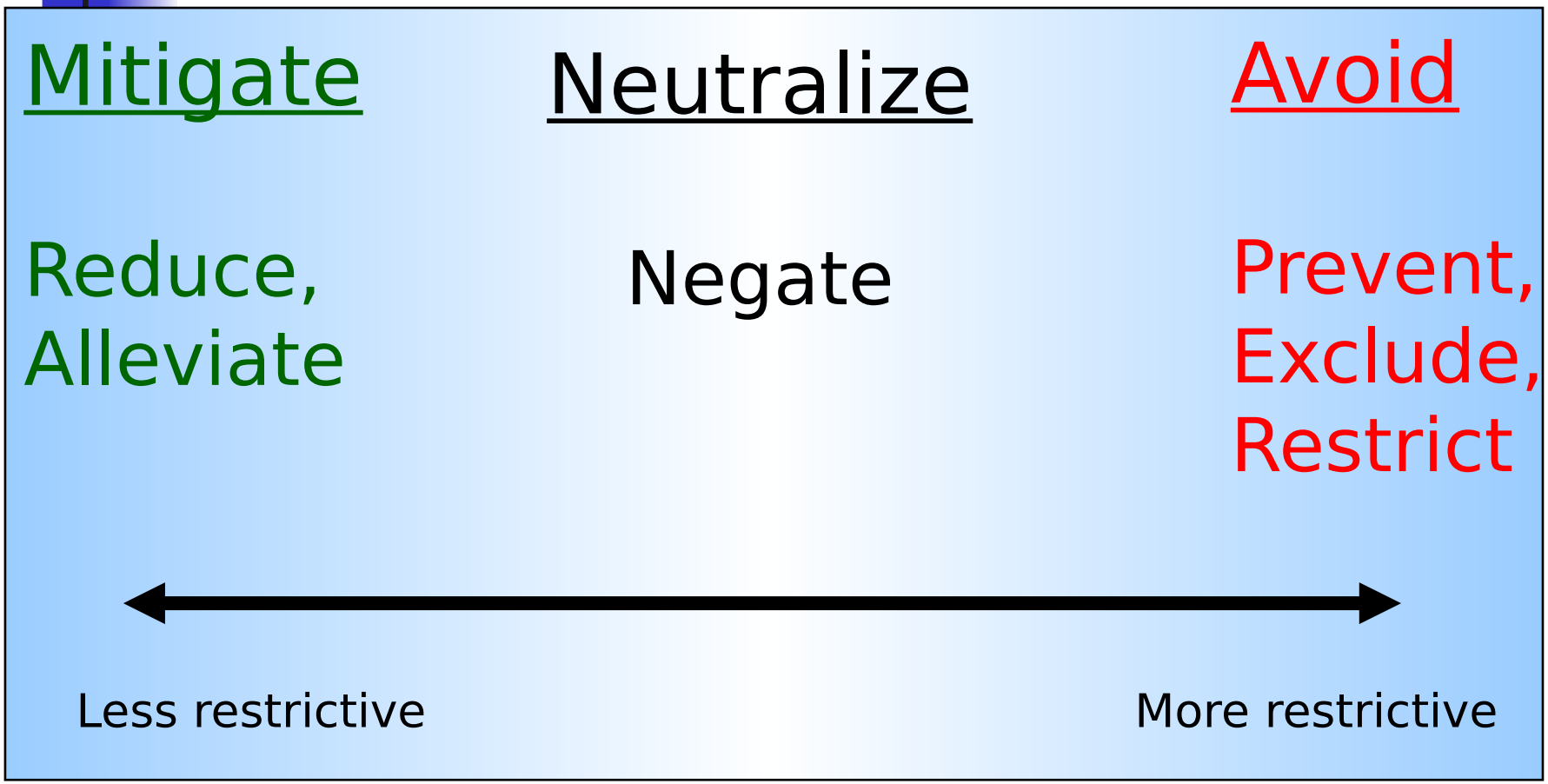
- Contractor prepares and furnishes complete specs for non-development items to be procured competitively
- Contractor technically evaluates other contractors' offers or products
- Contractor provides systems engineering and technical direction for a system
- Contractor requires proprietary information from others to perform a Govt contract

OCI: Contractor Perspective

Booz Allen & Hamilton

OCI video

Dealing with OCI



Dealing with OCI (cont.)

Avoid

To prevent the occurrence of an actual or potential OCI through actions such as exclusion of sources or modifications of requirements.

Neutralize

To negate, through a specific action, potential or actual OCI related to (1) contractor objectivity during contract performance or (2) an unfair competitive advantage

Dealing with OCI (cont.)

- Mitigate
  - To reduce or alleviate the impact of OCI to an acceptable level of risk so that the Government's interests with regard to fair competition and/or contract performance are not prejudiced
- Mitigation Plan (to be reviewed by OGC)
  - Submitted by the contractor, proposing actions to reduce the identified and/or potential OCI to an acceptable level

NRO OCI Policy

- To ensure the NRO obtains unbiased contractor support and maintains competitive integrity, no contractual relationship will be established when an actual or potential OCI exists unless the C/O
  - Resolves the OCI, and documents, or
  - Obtains a waiver of OCI requirements from D/OC

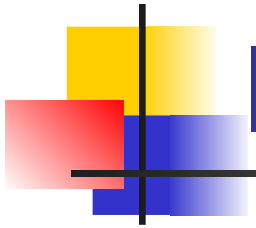
NRO OCI Policy (cont.)

- C/O and COTR will review, evaluate, and identify potential or actual OCI:
  - Prior to issuing a solicitation, and
  - *Continuously* throughout contract performance

Recognizing OCI is situational & dynamic

Recent OCI Policy Addition

- If a contractor is supporting:
  - Development or source selection plans
  - Evaluation of proposals
  - Determination of competitive range
  - Ranking of bids, proposals, or competitors
  - Selecting a source for contract award
- No other division of that contractor can bid as prime or sub on the effort being competed



Identifying OCI

- NRO OCI Guide N85.2.2 provides framework for identifying OCI
  - Questions, references, potential solutions
  - Centers around four general rules
    - If the situation violates one or more of the rules, then the OCI must be resolved
  - “Lack of objectivity or an unfair advantage”

N85: OCI Mitigation Plan

- The NRO Guide has a basic outline
  - General
  - Definitions
  - Description of the Requirement and the OCI Situation
  - Management of the Mitigation Plan
  - Isolated or Compartmented Organizational Structure (If Applicable)
  - Program Information or Documentation
  - Contractor Prohibitions
  - Noncompliance with this Agreement
  - Annual Certification Requirement

COTR Actions

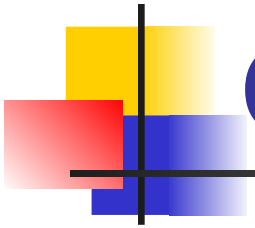
- Use N85 to review the questionnaire (or use this book)
- Seek the advice of your CO
- If you believe you have an OCI situation, first attempt to mitigate it
- OCI plans are normally required as a CDRL
- Could be required as a segment of a proposal (Sec L of the UCF)

CO Actions

- Coordinate with the COTR
- Become familiar with N85
- You may have to negotiate the terms and conditions of the plan – don’t accept as is
- Plan must be sent to OGC for review before incorporated into the contract

OGC Actions

- Review the OCI Mitigation Plan
- Provide advice to CO if the plan is not legally sufficient
- Assist the CO as necessary to negotiate changes to the plan (if required)



OCI: Example #1

- As a program's Systems Integrator (SI), Contractor A is responsible for maintaining configuration control, as well as drafting specs for mission control software development efforts. Another division of Contractor A requests a copy of the government solicitation to provide the mission control software; potential OCI.

OCI: Example #2

- The COTR for an R&D program office conducts an industry forum concerning future R&D interests of the organization. The COTR requests capability papers and ideas from those contractors attending. The responses are placed in a “shared folder” in the organization’s LAN. All the SETAs working in the program have access to the shared folder and the proposals or ideas contained therein. *This is an OCI for the SETAs by virtue of their having access to proprietary information of the businesses submitting capability papers. A potential competitive advantage exists for the SETAs with access to the LAN.*